

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Andre D. Rice,)	CASE NO. 3:10 CV 1916
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Robert C. Welch, Warden,)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge McHargh (Doc. 24) which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner filed Objections to the Report and Recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or

recommendation.”

Discussion

Petitioner is incarcerated following his guilty plea to involuntary manslaughter and aggravated robbery in the Lucas County Common Pleas Court. Petitioner filed an Amended Petition asserting 16 grounds for relief after exhausting his state court remedies. The Magistrate Judge concluded, in a very thorough Report and Recommendation, that the respondent’s Motion to Dismiss should be granted. This Court agrees and incorporates herein the reasoning set forth in the Report and Recommendation.

The Magistrate Judge found petitioner’s first, second, third, fourth, sixth, and seventh grounds to be barred by the guilty plea. To the extent petitioner presents arguments to the contrary, they are unavailing. The Magistrate Judge concluded that the fifth ground, asserting ineffective assistance of counsel, did not demonstrate that the state court ruling was an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984). This Court agrees. Nor does the Court find any error in the Magistrate Judge’s determination that grounds eight, ten, twelve, thirteen, fourteen, and fifteen are procedurally defaulted as *res judicata*. Petitioner’s eleventh ground, ineffective assistance of appellate counsel, is likewise procedurally defaulted and any attempt to return to state court with this claim would be futile. Finally, grounds nine and sixteen, which assert legal or actual innocence, are not cognizable.

For these reasons, and those stated in the Report and Recommendation which is incorporated herein, the Petition for Writ of Habeas Corpus is dismissed.

Conclusion

Accordingly, the Report and Recommendation is accepted. The Petition for Writ of

Habeas Corpus is dismissed. Furthermore, for the reasons stated herein and in the Report and Recommendation, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 9/23/14